IN THE HIGH COURT OF DELHI

Crl.M.C. No.2380/2004

Visionaries Media Network & Anr. ..... Petitioners
! through: Mr. Ashok Mathur, Advocate

VERSUS

$ STAR India Pvt. Ltd. ..... Respondent
^ through : Mr. Sandeep Mittal, Advocate with
Ms. Jasmine Damkewala, Advocate

RESERVED ON: 08.08.2007

% DATE OF DECISION: 13.08.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.**

1. A short matter which could have been disposed of at the hearing held on 8.8.2007 was required to be reserved for judgment for the reason learned counsel for the respondent failed to search the relevant case law. A matter which is clearly covered in favour of the respondent viz-a-viz petitioner no.2 could have been disposed of on relevant judgment been cited.

2. It is expected from members of the bar to research and cite latest judgments on a point in issue.

3. In view of the decision of the Supreme Court reported as (2005) 4 SCC 417 *Prem Chand Vijay Kumar Vs. Yashpal Singh & Anr.*, learned counsel for the respondent conceded that the

complaint filed under Section 138 read with Section 141 of the NI Act was barred by limitation viz-a-viz first petitioner. It was however urged that the complaint was within limitation and was maintainable against the second petitioner.

4. Learned counsel for the petitioners had responded by urging that since the cheque in question was issued by the first petitioner, a company registered under the Companies Act, primary responsibility and liability being that of first petitioner, second petitioner's liability being vicarious, in the absence of the main accused, a co-accused whose liability was vicarious could not be prosecuted.

5. The issue is no longer res integra. In the decision reported as 2000 (1) SCC 1 *Anil Handi Vs. Indian Acrylic Ltd.* it was held that a complaint under Section 138 read with Section 141 of the NI Act 1938 was maintainable if only Director of the Company was impleaded as an accused. It was held that a company need not be a co-accused.

6. On facts I may note that whereas viz-a-viz first petitioner after serving a notice of dishonour of the cheque forming the basis of the complaint no complaint was filed within the prescribed period of limitation. The cheque was represented for payment and a second notice was served demanding payment and thereupon the complaint was filed. In view of the decision in *Prem Chand Vijay Kumar* (supra) the complaint against the company was conceded by learned counsel for the complainant to

be barred by limitation. But, viz-a-viz second petitioner, no notice of dishonour was served when the cheque bounced at the first presentation. Only one notice was served to second petitioner, when cheque bounced on second presentation.

7. It is not in dispute that qua petitioner no.2 the complaint is within limitation.

8. I may note that as per the complaint second petitioner is described as the Managing Director of accused no.1 i.e. petitioner no.1 and there are specific allegations that he is incharge and was responsible for the conduct of the business of the accused no.1 company.

9. Petition accordingly stands disposed of quashing the summoning order but viz-a-viz petitioner no.1 only. The summoning order is affirmed viz-a-viz second petitioner.

10. LCR be returned.

August 13, 2007 PRADEEP NANDRAJOG, J.
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